

Amendment No. 1 to SB0276

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 276*

House Bill No. 1109

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 40, Chapter 29, Part 1, is amended by adding the following as a new section:

40-29-107

(a) Any person who has had or is seeking to have the person's rights of citizenship restored pursuant to this part may also petition the court for a certificate of employability as provided in this section.

(b) A petition for employability shall be filed with the same court as the petition for restoration of citizenship rights as provided in § 40-29-105.

(c) The petitioner shall pay the costs of this application.

(d) The administrative office of the courts shall create a standard certificate of employability to be issued by the court and a standard petition for employability form to be used to petition the court for a certificate of employability. The form for the petition shall be placed on the web site of the administrative office of the courts. The form for the petition shall include places for all the information specified in subsection (e).

(e) A petition for employment filed by a person under this section shall include all of the following:

(1) The person's name, date of birth, and social security number;

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(2) All aliases of the person and all social security numbers associated with those aliases;

(3) The person's address of residence, including the city, county, state, and zip code;

(4) The length of time that the person has been a resident of this state, expressed in years and months of residence;

(5) A summary of the person's criminal history with respect to each offense that is a disqualification from employment or licensing in an occupation or profession, including the years of each conviction or plea of guilty for each of those offenses;

(6) A summary of the person's employment history, specifying the name of, and dates of employment with, each employer and the positions held;

(7) Verifiable references and endorsements;

(8) The name of one or more immediate family members of the person, or other persons with whom the person has a close relationship, who support the person's reentry plan; and

(9) A summary of the reason the person believes the certificate of employability should be granted.

(f) Before the petition for employability of a person rendered infamous or deprived of the rights of citizenship by the judgment of a state court is heard, the

district attorney general in whose county the petitioner currently resides and the district attorney general of the county in which the petitioner was convicted shall have twenty (20) days' notice of the petition in order that, if deemed advisable, each may resist. The United States attorney and the district attorney general in whose district the petitioner currently resides shall be given notice, of the petition and shall be given the same opportunity to resist, as afforded the United States attorney and the district attorney when the petitioner was rendered infamous or deprived of the rights of citizenship by the judgment of a federal court.

(g) The district attorney general of the county in which the petitioner was convicted that receives notification of the filing of a petition for a certificate of employability under this section shall notify any known victims of crimes perpetrated by the petitioner by sending notice of the filing of the petition to the last known address of such victims, if known.

(h) A court that receives a person's petition for employability pursuant to this section shall review the person's petition, the person's criminal history, filings submitted by any district attorney general, United States attorney, or victim of crimes perpetrated by the petitioner, and all other relevant evidence. The court may order any report, investigation, or disclosure by the person that the court believes is necessary for the court to reach a decision on whether to approve the person's petition for a certificate of employability.

(i) The court may issue a certificate of employability, at the court's discretion, if the court finds that the person has established all of the following by a preponderance of evidence:

(1) The petitioner has sustained the character of a person of honesty, respectability, and veracity and is generally esteemed as such by the petitioner's neighbors;

(2) Granting the petition will materially assist the person in obtaining employment or occupational licensing;

(3) The person has a substantial need for the relief requested in order to live a law-abiding life; and

(4) Granting the petition would not pose an unreasonable risk to the safety of the public or any individual.

(j) If the court grants the petition for employability, a certificate of employability shall be given to the petitioner for use in obtaining employment.

(k)

(1) If the court denies the petition, the court shall provide notice to the petitioner of the court's denial. The court may place conditions on the petitioner regarding the petitioner's filing of any subsequent petition for a certificate of employability. The court shall notify the petitioner of any conditions placed on the petitioner's filing of a subsequent petition for a certificate of employability.

(2) If the court denies the petition, the petitioner may appeal the decision to the court of appeals only if the petitioner alleges that the denial was an abuse of discretion on the part of the court.

(l) A certificate of employability issued under this section shall be presumptively revoked if the person to whom the certificate of employment was issued is convicted of or pleads guilty to a felony offense committed subsequent to the issuance of the certificate of employability.

(m)

(1) If a person presents a valid certificate of employability, no board, agency, commission, or other licensing entity that issues, restores or renews licenses or certificates and regulates occupations and trades for which a license or certificate is required to do business in this state shall deny the issuance, restoration or renewal of an occupational license or certificate based solely on the person's past record of criminal activity but instead shall consider on a case-by-case basis whether to grant or deny the issuance, restoration or renewal of an occupational license or an employment opportunity.

(2) Any rule of a board, agency, commission, or other licensing entity in effect on the effective date of this act with respect to the denial or refusal to issue, restore or renew the license or certificate of a person who has a past record of criminal activity shall control if the applicant does not possess a certificate of employability.

(3) However, if a person seeking the issuance, restoration or renewal of a license or certificate, does possess a certificate of employability, it shall preempt any present rule that authorizes or requires the denial or refusal to issue, restore or renew a license or certificate if the denial is based upon the person's past record of criminal activity.

(4) Notwithstanding subdivision (1) or (3) a board, agency, commission, or other licensing entity may adopt a rule on or after the effective date of this act denying the issuance, restoration or

renewal of a license or certificate to a person, notwithstanding the person's possession of a certificate of employability, based on:

(A) The time that has elapsed since the criminal offense; or

(B) The nature of the offense having a direct bearing on the fitness or ability of the person to perform one or more of the duties or responsibilities necessarily related to the license or certificate sought.

(n)

(1) In a judicial or administrative proceeding alleging negligence or other fault, a certificate of employability issued to a person pursuant to this section may be introduced as evidence of a person's due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the certificate was issued if the person knew of the certificate at the time of the alleged negligence or other fault.

(2) In any proceeding on a claim against an employer for negligent hiring, a certificate of employability issued to a person pursuant to this section shall provide immunity for the employer with respect to the claim if the employer knew of the certificate at the time of the alleged negligence.

(3) An employer who hires a person who has been issued a certificate of employability under this section may be held liable in a civil action based on or relating to the retention of the person as an employee only if:

(A) The person, after being hired, subsequently demonstrates danger or is convicted of a felony;

(B) The person is retained by the employer as an employee after the demonstration of danger or the conviction,

(C) The plaintiff proves by a preponderance of the evidence that the person having hiring and firing responsibility for the employer had actual knowledge that the employee was dangerous or had been convicted of the felony and

(D) The employer, after having actual knowledge of the employee's demonstration of danger or conviction of a felony, was willful in retaining the person as an employee.

(o) Nothing in this section shall be construed to apply to a person or entity subject to licensing, certification or regulation by any board, commission, or agency pursuant to title 33, chapter 2, part 4; title 38, chapter 8; titles 41; 49, 56 and 71; or persons subject to regulation by the department of financial institutions pursuant to title 45 and title 56, chapter 37.

SECTION 2.

(a) This act shall take effect upon becoming a law, the public welfare requiring it for purposes of:

(1) The administrative office of the courts creating a certificate of employability form and a petition for employability form pursuant to § 40-29-107(d), and

(2) A board, agency, commission, or other licensing entity promulgating new rules as provided in § 40-29-107(n).

(b) This act shall take effect on July 1, 2014, the public welfare requiring it for purposes of:

(1) Employers receiving the immunity from liability conferred in § 40-29-107(n).

(2) A person petitioning the appropriate court to obtain a certificate of employability.

(3) A person who obtains a certificate of employability using it to apply for employment in an occupation or field that does not require a license or certificate issued by the state.

(c) This act shall take effect on effect January 1, 2015, the public welfare requiring it for purposes of any person who possesses a certificate of employability applying for employment in an occupation or field that does require a license or certificate issued by the state.

(d) For all other purposes, this act shall take effect on effect January 1, 2015, the public welfare requiring it